IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5281 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATHAN ABBASKHAN IBRAHIMKHAN

Versus

DIRECTOR GENERAL OF POLICE OR HIS SUCCESSOR IN THE OFFICE

Appearance:

1. Special Civil Application No. 5281 of 2003

MRS NISHA M PARIKH for Petitioner No. 1

MS REETA CHANDARANA, AGP for Respondent No. 1-4

RULE SERVED for Respondent No. 5

MR BHAVIK A JOSHI for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 06/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has prayed for

quashing and setting aside the order dated 31.3.03 passed by the respondent No.1 by which the request of the petitioner to correct the date of birth of the petitioner recorded in his service book was rejected.

2. The facts as obtaining from the petition are that the petitioner joined the services of the respondents on 29.11.69 as Constable. The petitioner is presently working as Assistant Sub-Inspector. It is the case of the petitioner that his correct date of birth is 5.4.51. However, on account of the mistake on the part of the respondent authorities, date of birth recorded in the service book of the petitioner was 5.4.47. The petitioner has stated in the petition that the petitioner was supplied with a duplicate copy of the service sheet only in the year 1991 and only then did he come to know that the date of birth recorded in his service book is 5.4.47. The petitioner, therefore, made a representation dated 11.6.91 to the Commissioner of Police, Ahmedabad City. In the said representation dated 11.6.91, the petitioner had stated that at the time when he was required to sign his service book, he came to know that the date of birth recorded therein was 5.4.47. The petitioner has further stated in the representation that his correct date of birth is 5.4.51 and the same may, therefore, be corrected.

3. The petitioner has also stated in the petition that pursuant to the said representation of the petitioner, the respondents demanded original school leaving certificate of the petitioner which the petitioner had already submitted at the time of his entry in the service and, he therefore, approached the School authorities and obtained authenticated duplicate school leaving certificate and produced the same before the authorities. The petitioner produced an affidavit dated 26.4.93 along with which he produced the school leaving certificate issued by the Principal of Jyoti Vidya Mandir in which the date of birth of the petitioner indicated is 5.4.51. The petitioner thereafter produced yet another School Leaving Certificate from Shri Nootan Vidyalaya, (now known as Laherchand Surchand Patwa High School) situated at Bhalak, Taluka Visnagar, Dist: Mehsana along with his affidavit dated 27.11.95. In the said school leaving certificate also the date of birth of the petitioner is shown as 5.4.51.

4. Despite making representation and supplying the school leaving certificates, since the respondents did not pass any order in favour of the petitioner, the petitioner made yet another representation on 28.12.99

and pointed out to the authorities that the date of birth of 5.4.47 recorded in the service book of the petitioner is on account of the mistake on the part of the City Branch of the respondents and his correct date of birth is 5.4.51 and that at the time of his recruitment, he had submitted the original certificate in support of his date of birth. He, therefore, once again requested the respondent authorities to grant the correction in the date of birth. The petitioner thereafter supplied documents as demanded by the respondents. However, since there was no further response, the petitioner made yet another representation dated 14.2.02 and gave full details about his brothers and sisters and also supplied the proof of their dates of birth to the extent available. The petitioner was thereafter communicated by the respondents the impugned order dated 31.3.03 that his request for correcting the date of birth is rejected on the grounds that (i) no material has been produced in support of the request for change in the date of birth recorded in the service book; (ii) certificate of birth and death register is not produced; and (iii) school leaving certificate is not in original.

5. The petitioner has, therefore, filed this petition challenging the order dated 31.3.03 and contended that the recording of date of birth of petitioner as 5.4.47 in his service book was an error on the part of the respondents and the petitioner had never disclosed his date of birth as 5.4.47. In fact the petitioner had consistently averred that his correct date of birth is 5.4.51 and at the time of entry in the service also, the petitioner had produced his school leaving certificate in support of his date of birth which according to him is 5.4.51. The petitioner has, therefore, submitted before this Court that the petitioner should not be made to suffer on account of the error on the part of the respondents and when the petitioner moved the respondents by proper application, as soon as he came to know about the mistake in the recording of his date of birth, the same cannot be rejected on technical grounds. The petitioner has also drawn my attention to the letter dated 16.8.02 written by the Additional Police Commissioner (Administration) to the Police Commissioner, Ahmedabad in which it is stated that the recording of date of birth of 5.4.47 in the service sheet of the petitioner instead of 5.4.51 appears to be a mistake and that necessary orders are required to be passed to correct the date of birth of the petitioner.

6. Appearing for the respondents, learned AGP Ms.Reeta Chandarana has drawn my attention to the affidavit in

reply filed by the respondents. In the said affidavit in reply dated 4th July 2003, the respondents have contented, inter alia, that the petitioner should have approached the authorities earlier and his request for change of date of birth at this stage cannot be accepted. It is specifically pointed out that the petitioner was time and again intimated to place on record the school leaving certificate, but he failed to produce on record the school leaving certificate from Smt.G.G.I. Tent High School, Ahmedabad. It is also stated that the school leaving certificate from Laherchand Surchand Patva High School dated 30th April 2993 is a duplicate certificate and therefore the request for change of date of birth cannot be entertained for want of proper application and production of proper certificate.

7. The counsel for the respondents has also urged that the request of Government employees for change of date of birth long after entry in the service should not be entertained. She has relied upon certain decisions of the Hon'ble Supreme Court as well as of this High Court. She has placed reliance on a decision of the Hon'ble Supreme Court in the case of State of Punjab v. S.C.Chadha, (2004) 3 SCC 394, wherein the Hon'ble Supreme Court was pleased to observe that delayed application for correction of date of birth in absence of documentary evidence to prove that the recorded date of birth was wrong should not be entertained especially when it is made on the eve of superannuation.

8. Reliance is placed on the decision of G.M.Bharat Coking Coal Ltd v. Shib Kumar Dushad, (2000) 8 SCC 696 wherein the Hon'ble Supreme Court was pleased to observe that when the question regarding correctness of the date of birth as entered in service record is raised by an employee long after his joining the service and the employer decided the question following the procedure prescribed by the statute or instructions, in absence of any arithmetical or typographical error apparent on the face of the record, High Court should not interfere with such decision of the employer in exercise of powers under Article 226 of the Constitution of India. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of Commissioner of Police v. Bhagwan V. Lahane, (1997) 1 SCC 247 wherein the Hon'ble Supreme Court was pleased to observe that in absence of material to show that the entry in the school leaving certificate was incorrect and the extract from the birth register even otherwise being doubtful, the authorities rightly refused to correct the date of birth recorded. It was further observed that an employee seeking correction must

show that the recorded date of birth was made due to negligence of some other persons or that the same was an obvious clerical error.

9. The counsel for the respondents has also relied on the decision reported in 1993(2) G.L.H. 1076 (Smt.Hansabehn S. Zaveri v. State of Gujarat) wherein the learned single Judge of this High Court was pleased to observe that the expression "bonafide clerical mistake" found in rule 171 of BCSR covers the situation wherein the clerk while entering the date of proof produced by employee committed an error in recording the date and the expression "bonafide clerical error" would not include a situation wherein change is sought for on the ground that the date of birth was not correctly recorded in the document produced by the employee at the time of entry in service.

10. It is true that the request of the Government servant seeking change in the date of birth recorded in the service book should be approached with care, caution and circumspection especially when such request has been made long after the entry in the service. In number of decisions, the Hon'ble Supreme Court has held that the employees seeking correction in the date of birth at the fag end of their career and on the eve of their retirement should not be lightly granted. This, however, does not mean that in no case the request of the employee for correction of date of birth can be entertained by the Government. Under rule 171 of the BCSR itself, it is provided that when once an entry of age or date of birth has been made in the service book, no alteration of entry should afterwards be allowed unless it is known that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error. It is further provided that the request made for alternation of date of birth should not be entertained after the preparation of service book of the Government servant concerned and in any event not after the completion of the probation period or five years continuous service whichever is earlier and in case where there is no probation period, such request should not be entertained after completion of five years continuous service. It is further provided that the date of birth, however, may be permitted to be altered at a later stage if the Government is satisfied that a bonafide clerical mistake has been committed and that it should be rectified.

11. It can thus be seen from rule 171 of the BCSR that the Government has ample power to correct the date

of birth of an employee if it is found that there was a bonafide clerical mistake committed while recording the date of birth of the Government servant concerned.

12. In the present case, the petitioner has stated in the petition as well as in the numerous representations made to the authorities that the correct date of birth of the petitioner is 5.4.51 as borne out from series of school leaving certificates. He has specifically made out a case that he had disclosed the date of birth as 5.4.51 at the time of seeking Government employment. He has also stated that in support of his disclosure of the date of birth of 5.4.51, he had also produced school leaving certificate at the time of entry in service. He has, therefore, been contending that the recording of date of birth as 5.4.47 in his service book is entirely on account of clerical error through oversight of the person concerned and not on account of any mistake on the part of the petitioner. The petitioner has supplied two school leaving certificates to the authorities along with his affidavits. Both the school leaving certificates consistently show his date of birth as 5.4.51. The respondents in the affidavit in reply having suggested that the petitioner has not produced the school leaving certificate of Smt.G.G.I. High School, Ahmedabad, counsel for the petitioner has today produced on record a duplicate school leaving certificate duly authenticated by the Principal of the said Smt. G.G.I. High School, Ahmedabad in which also the date of birth of the petitioner disclosed is 5.4.51. In the affidavit in reply filed by the respondents, none of the above noted contentions of the petitioner has been denied. It is not stated that the petitioner had not disclosed his date of birth as 5.4.51 at the time of entry in the service. It is also not disputed that averments of the petitioner that the petitioner had produced school leaving certificate in support of his date of birth of 5.4.51. It is nowhere pointed out in the affidavit in reply what was source of the date of birth recorded as 5.4.47 in the service book of the petitioner. It is not the case of the respondents in the affidavit in reply that the petitioner himself had disclosed his date of birth as 5.4.47 at the time of entry in the service. Despite there not being any suggestion in the affidavit in reply, I had given sufficient opportunity to the respondents to produce on record the source of recording of the date of birth of 5.4.47. The learned AGP despite sufficient time being given was unable to point out from the original service record of the petitioner as to from which source the date of birth of 5.4.47 was recorded. In view of this admitted position, I have no hesitation in coming to

the conclusion that the petitioner had in fact approached the Government at the time of entry in the service and contended that his date of birth is 5.4.51 and that he had also substantiated the same by proper school leaving certificate.

13. This is also not a case where the petitioner has requested for change of date of birth at the fag end of his service career or at the eve of his retirement. Admittedly, the petitioner made his first representation in the year 1991 while even according to the date of birth recorded in the service book, he would superannuate only in the year 2005. The petitioner has also stated in the petition that for the first time the duplicate of the service sheet was made available to him only in the year 1991, whereupon immediately he made representation to the authorities. Thereafter also, the respondent authorities demanded documents upon documents from the petitioner which to the available extent the petitioner supplied. Eventually, the request of the petitioner came to be rejected by the impugned order dated 31.3.2003. The petitioner, therefore, filed the present petition before this High Curt on 17th April 2003, i.e. almost immediately upon being communicated with the rejection of his request.

14. The above facts coupled with the fact that the petitioner had not received any undue advantage at the time of his entry in service on the basis of the date of birth of 5.4.47 and in other words, since the petitioner was neither over-aged nor under-aged at the time of entry in the service had the correct date of birth of 5.4.51 been recorded, I find that the petitioner had before the authorities made out a sound case for correction of the date of birth recorded in his service book. The petitioner as noted above, produced two school leaving certificates in which the date of birth indicated was that of 5.4.51. Upon demand, school leaving certificate from yet another school namely, Smt.GGI High School, Ahmedabad is also produced by the petitioner in which also the date of birth recorded is 5.4.51. Thus on all counts, the petitioner had made out a case to convince the authorities that the recording of his date of birth of 5.4.47 is a mistake on the part of the authorities and that the correct date of birth of the petitioner is 5.4.51 and that the petitioner was at no stage responsible for the incorrect date of birth being recorded in his service book. On all these counts, I find that the petitioner had discharged the heavy burden lying on his head for seeking correction of date of birth. The case of the petitioner in my view is well

covered by the provisions of Rule 171 of the BCSR. It was a pure mistake on the part of the authorities to record the incorrect date of birth of 5.4.47 instead of the correct date of birth of 5.4.51 as declared by the petitioner which was well supported by documentary proof of school leaving certificates. The authorities were at one stage convinced about the genuineness of the request of the petitioner as borne out from the letter dated 16.8.2002 written by the Additional Police Commissioner (Administration), Ahmedabad to the Commissioner of Police, Ahmedabad wherein it is clearly stated that the recording of date of birth of 5.4.47 in the service sheet of the petitioner appears to be a mistake and his correct date of birth is 5.4.51 and that necessary orders for correcting the same may kindly be passed.

15. In view of the above discussion, when I find that the petitioner was nowhere responsible for incorrectly recording his date of birth in the service book as 5.4.47, when the date of birth disclosed by the petitioner as recorded in the school leaving certificate is 5.4.51, the authorities ought to have considered the case of the petitioner and tried to find out whether the school leaving certificates produced by the petitioner are borne out from the record available in the school. Instead of adopting this approach, the respondents mechanically and by total non-application of mind rejected the request of the petitioner by the impugned order dated 31.3.03. The reasons indicated therein are not germane to the issues arising. The petitioner had produced authenticated duplicate school leaving certificate in support of his contention that his correct date of birth is 5.4.51. Therefore, to state that no material is produced in support of the date of birth was totally wrong. The question of production of extract from the birth and death register is equally out of place since the petitioner has been contending that his birth was never registered and obviously, therefore, such document is not in existence. The third objection, namely, that of school leaving certificate not being in original is also equally improper since the petitioner had stated that the original school leaving certificate had been produced by him at the time of entry in service and he had produced the authenticated duplicate copy of the school leaving certificate. Even otherwise, if the original school leaving certificate is not available with the petitioner, can it be said that the authorities are not required to consider the request of the petitioner solely on the ground that the original certificate is not available when the petitioner has produced on record an authenticated duplicate certificate from the school

authorities. If the respondents had any doubt about the genuineness of the certificate produced by the petitioner, it was always open for them to approach the school authorities for verification of the documents submitted by the petitioner. Thus on all counts, I find that the respondents erred in rejecting the request of the petitioner for correction of date of birth by the impugned order dated 31.3.2003.

16. Consequently, I would have found it justified to direct the respondents to carry out the correction in the date of birth of the petitioner from 5.4.47 to 5.4.51. However, to approach the issue with caution and circumspection, I provide that even now, it will be open for the respondents to approach the school authorities of the school from which the petitioner has obtained the school leaving certificate to verify the authenticity of the said school leaving certificate and if found that the school leaving certificates issued by the schools are on the basis of the school records, the respondents shall carry out the corrections in the date of birth of the petitioner in the service records as prayed for by him. The above exercise of verification, if the respondents so desire to do, shall be completed with a period of one month from the date of receipt of a copy of this order.

17. In the result, the petition is allowed as aforesaid. Rule is made absolute accordingly with no order as to costs.

Direct service is permitted.

(Akil Kureshi, J.)
(vjn)